

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for
Reinstatement of the Revoked License by:

ALFRED SOTO

P.T. Assistant License No. AT 1772,

Petitioner.

Case No. 1D 2002 63184

OAH No. L2003050175

DECISION

This matter was heard by the Physical Therapy Board of California on May 19, 2003, in Orange, California. The Board members participating in the hearing and decision were Ellen Wilson, P.T.-President, Jay H. Segal, P.T.-Vice President, Louis Garcia, Jerry Kaufman, P.T., Donald Chu, Ph.D., P.T., and James Turner. Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Sean F. Leslie, Esq., represented Petitioner, who also appeared.

Jennevee H. de Guzman, Deputy Attorney General, represented the Office of the Attorney General, California Department of Justice.

Jurisdictional documents were presented. Testimony was taken and oral argument given. The matter was submitted, following which the Board met in an executive session, and the matter was decided the same day.

The below order GRANTING the petition and REINSTATING Petitioner's license, on probationary terms and conditions, is based on the following Factual Findings and Legal Conclusions:

FACTUAL FINDINGS

1. On December 4, 1987, the Physical Therapy Examining Committee ("Committee"), which is now known as the Physical Therapy Board of California ("Board"), issued Alfred Soto ("Petitioner") Physical Therapist Assistant License No. AT- 1772.

2. On September 29, 1993, Steven K. Hartzell, Executive Officer of the Committee, filed an Accusation before the Committee in its Case No. D-5460.

The Accusation arose out of:

A. Petitioner's following convictions: in 1980 for violating California Vehicle Code section 10852 (breaking or removing vehicle parts); in 1982 for violating Penal Code section 374(b)(5) (littering) and Penal Code section 1320 (failure to appear in court); in 1990 for violating Vehicle Code section 2800 (failure to obey a peace officer), Vehicle Code section 14601.1(a) (driving with suspended privilege), and Vehicle Code section 23152(b) (driving while under the influence of alcohol); his 1990 violation of probation from an above-described conviction; and a 1991 arrest for possessing a controlled substance, which resulted in his being ordered into a twenty-four (24) month diversion program.

B. Petitioner's failure to disclose in his 1987 license application his 1980 conviction for breaking or removing vehicle parts and his 1982 conviction for littering and failing to appear in court.

C. Petitioner's fraudulently obtaining his license by failing to disclose the material facts described above in paragraph 2.B.

D. Petitioner's commission of the dishonest acts underlying his 1980 conviction for breaking or removing vehicle parts, and his 1990 conviction for failure to obey a peace officer which involved his making a false statement to a peace officer.

3. On December 6, 1994, the Committee adopted, by Decision and Order, a Stipulated Settlement and Disciplinary Order between the parties in the Accusation matter, in which Petitioner admitted the truth of each allegation of the Accusation, including those described in Factual Finding 2.A.-2.D.

Effective January 5, 1995, Petitioner's license was revoked, but the revocation was stayed and Petitioner was placed on probation for four (4) years under various terms and conditions, including that Petitioner enroll in and complete the Committee's Diversion Program and pay ordered enforcement costs of \$ 2,000.00 (a reduced amount from the total costs incurred of \$ 10,378.98).

4. On August 23, 1996, Steven K. Hartzell, Executive Officer, filed a Petition to Revoke Probation due to Petitioner's failure to complete the Diversion Program and pay the ordered costs. The Committee, by default decision, revoked Petitioner's license for failure to complete the Diversion Program and pay the ordered costs, ordered Petitioner to pay the complete costs of \$ 10,378.98, and ordered that his license or any related license would not be reinstated unless he first paid that amount. The Order was effective March 10, 1997.

5. Petitioner completed only approximately one year and a half of his probation before it was terminated and his license revoked.

6. The instant petition, filed with the Board on September 17, 2002 (approximately 5 years and 6 months after license revocation), requests reinstatement of Petitioner's license. Written evidence was received, consisting of Petitioner's narrative statement, verified recommendations from two (2) physical therapists holding California licenses, copies of the Board's prior disciplinary Orders against his license, and other documents.

7. Petitioner's misconduct and convictions resulted from longstanding alcohol and drug addictions, which were exacerbated by the deaths of three close relatives, and a failed marriage.

8. After revocation of his license, Petitioner moved to Massachusetts, where he was also licensed to perform as a physical therapist assistant. He did so there, intermittently, until April of 2001. He also returned to school while there, including review of Anatomy and Physiology courses. Petitioner returned to California in Spring of 2001, to be with his young son, whom he supports. He has regularly attended church. Petitioner has thus made positive strides to restore his personal life and professional career since his California license was revoked.

9. Petitioner has seen addiction counselors intermittently for the past five (5) years, and recently completed a 12 month alcohol and drug addiction program. He has been sober the last few years. He still attends Alcoholics Anonymous classes and also receives counseling at church on a personal matter he declined to discuss more specifically.

10. No evidence was presented that Petitioner harmed a client while performing as a physical therapist assistant, nor that a complaint has ever been filed against him in either California or Massachusetts regarding the same.

11. Petitioner expressed remorse for his past behavior, and vowed he will not repeat it. He also apologized to the Board for any inconvenience he caused. He expressed a willingness to have a reinstated license under probationary terms and conditions.

12. Petitioner is interested in resuming his physical therapist assistant work in California. He is currently working in the construction industry, which he finds physically demanding and more suitable for younger men. He also hopes regaining his license will allow him to someday pursue a career as a nurse or physician's assistant.

13. The following evidence in aggravation was revealed at the hearing:

A. Although Petitioner has had no contacts with law enforcement the past few years, he failed to disclose to the Board in his petition an arrest and conviction for drunk driving in Massachusetts in 1999.

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B. Petitioner also failed to disclose in his petition that he surrendered his Massachusetts license after State authorities there began an investigation upon receiving information of the instant Board's revocation of his California license.

C. Although Petitioner testified he accepted responsibility for failing to comply with his previous probation with the Board, he also testified his failure to do so was due in part to actions of the probation monitor he believed at the time acted unreasonably. Petitioner admitted he did not contact the Board or its executive officer regarding such, and that he failed to respond to the Petition to Terminate Probation. Moreover, Petitioner has still not fully complied with the terms of his prior probation: the alcohol and drug program he recently completed was not as comprehensive as the Diversion Program; he has not to date paid any of the ordered costs from the prior probation.

14. The Office of the Attorney General argued Petitioner failed to establish his rehabilitation or that his return to practice would not endanger the health and safety of the public, and thus requested the Board deny the petition.

LEGAL CONCLUSIONS

1. The burden in a petition for reduction of an administrative penalty rests, at all times, with the petitioner. *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.

2. Cause exists to reinstate Petitioner's license, on a probationary basis.

Government Code section 11522 provides that a person whose license has been revoked may petition the governing agency for reinstatement, and governs such petitions unless another, more specific, statute contains different provisions.

In this case, Business and Professions Code section 2661.7 specifically applies to the Board, and provides such a petition may be brought after a period of not less than three (3) years from when a license was revoked for unprofessional conduct (subdivision a). The petition must state any facts required by the Board and be accompanied by at least two verified recommendations from physical therapists licensed by the Board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed (subdivision b). The Board, or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability (subdivision d).

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Title 16, California Code of Regulations, section 1399.21, sets forth the following criteria used in evaluating rehabilitation of a petitioner: the nature and severity of the acts supporting prior discipline; acts committed subsequent to that discipline; the time that has elapsed between the acts leading to discipline and any subsequent acts of misconduct; compliance with terms of probation or other sanctions lawfully imposed on the petitioner; and evidence of rehabilitation.

In this case, Petitioner has made a satisfactory showing of rehabilitation indicating that, with due consideration for the public safety, it would not be against the public interest at this time to reinstate his license. The petition met all jurisdictional requirements. Petitioner has progressed in his battle against addictions which led to his license revocation. He has remained sober the past few years and is still undergoing counseling. He is re-establishing ties with his family and community, and thus appears to have these as solid goals to keep him sober. He is remorseful of his prior misconduct and has promised not to regress. Since there is no evidence of deficient performance as a physical therapist assistant, and he performed such duties for some time in Massachusetts subsequent to his California license being revoked, no concern about his clinical fitness is indicated. Factual Findings 1-12.

3. However, the public will be fully protected if such reinstatement is on a probationary basis. Both Government Code section 11522 and Business and Professions Code section 2661.7(e) provide the Board authority to reinstate a license upon appropriate “terms and conditions.”

In this case, there is cause for the terms and conditions contained in the Order below. Petitioner fulfilled very little of his prior probation. After battling his addictions and losing his California license, he still was convicted of drunk driving in 1999. He failed to disclose that fact, as well as having surrendered his Massachusetts license, in his petition. That lack of candor combined with a residual anger about the way in which his prior probation was terminated indicates his rehabilitation is still progressing. His battle against drugs and alcohol will be life-long. Thus, it is appropriate for Petitioner’s practice to be restricted, for him to completely abstain from drugs and alcohol, be subject to monitoring and the Board’s Diversion Program for the duration of his probation, and psychological monitoring to make sure his progress continues. Moreover, since Petitioner has not yet taken the examination of the laws and regulations pertaining to this Board, or paid any of the costs incurred in the prior disciplinary proceeding, he should be required to do so, as conditions precedent to having his license reinstated under the probationary terms. Because of the other costs incurred in complying with these terms, the Board has reduced the amount of cost recovery and structured a monthly payment process. Factual Findings 13-14.

ORDER

The petition is GRANTED. Physical Therapist Assistant License No. AT 1772, issued to ALFRED SOTO (hereinafter “respondent”), shall be reinstated on a probationary basis for FOUR (4) years, on the following terms and conditions:

1. *Cost Recovery*

Respondent shall reimburse the Board its costs incurred in this case in the amount of \$ 6,000.00, the rest being forgiven to allow respondent to fund the other expenses and costs incurred by the other terms and conditions of this Order. Respondent shall pay \$ 2,000.00 immediately to the Board, and his license will not be reinstated and his probation will not commence until after that amount is paid in full. Thereafter, respondent shall pay \$ 100.00 per month for the first 40 months of this probation, in order to pay the remaining \$ 4,000.00 of costs. Failure to make the ordered reimbursement may constitute a violation of the probation order. Probation will not be terminated until the full \$ 6,000.00 is paid to the Board.

2. *Written Exam on the Governing Laws & Regulations*

Before being reinstated, and before his probation may commence, respondent shall also take and pass the Board's written examination on the laws and regulations governing the practice of physical therapy in California. If respondent fails to pass the examination, respondent's license will not be reinstated, his probation will not commence, and he shall be suspended from the practice of physical therapy until a repeat examination has been successfully passed.

3. *Performance While on Probation*

It is not contrary to the public interest for the respondent to perform as a physical therapist assistant under the probationary conditions specified in this Order.

4. *Administration or Possession of Controlled Substances*

Respondent shall not administer or possess any controlled substances as defined in the California Uniform Controlled Substances Act. This prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a practitioner licensed to prescribe such medications.

5. *Prohibition of Possession or Use of Controlled Substances*

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a practitioner licensed to prescribe such medications.

6. *Prohibition of the Use of Alcohol*

Respondent shall abstain completely from the use of alcoholic beverages.

7. *Biological Fluid Testing*

Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.

8. *Diversion Program*

Within 15 days from the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program, and shall do so until the completion of this probation. Failure to comply with requirements of the Diversion Program, terminating the program without permission, or being expelled for cause, shall constitute a violation of probation by respondent.

9. *Psychiatric/Psychological Evaluation and Treatment*

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric/psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychiatrist/psychologist, who shall furnish an evaluation report to the Board or its designee. The respondent shall pay the cost of the psychiatric/psychological evaluation.

If respondent is required by the Board or its designee to undergo psychiatric and/or psychological treatment, respondent shall within 30 days of the requirement submit to the Board for its prior approval the name and qualifications of a psychiatrist/psychologist of respondent's choice. Respondent shall undergo and continue psychiatric/psychological treatment until further notice from the Board or its designee. Respondent shall have the treating psychiatrist/psychologist submit quarterly status reports to the Board or its designee indicating whether the respondent is capable of performing as a physical therapy assistant safely.

10. *Probation Monitoring Costs*

All costs incurred by the Board for probation monitoring during the entire period of probation shall be reimbursed by respondent. Respondent will be billed at least quarterly. Failure to make the ordered reimbursement within 60 days of the billing shall constitute a violation of the probation order. In addition to the filing of an Accusation or the issuance of an administrative citation, the filing of criminal charges shall be sought when appropriate.

11. *Obey All Laws*

Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

12. *Compliance With Orders of a Court*

Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court may constitute a violation of probation.

13. *Compliance With Criminal Probation and Payment of Restitution*

Respondent must not violate any terms and conditions of criminal probation and be in compliance with any restitution ordered.

14. *Quarterly Reports*

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

15. *Probation Monitoring Program Compliance*

Respondent shall comply with the Board's probation monitoring program.

16. *Interview With the Board or its Designee*

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.

17. *Notification of Probation Status to Employers*

Respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Petition and this Decision and Order to the employer. The respondent shall obtain written confirmation from the employer that the documents were received. If the respondent changes, or obtains additional employment, the respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

18. *Notification of Change of Name or Address*

Respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.

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19. *Restriction of Practice - Temporary Services Agencies*

Respondent may only practice or perform as a physical therapist assistant in a supervised structured environment. The respondent shall not work for a temporary services agency or registry.

20. *Prohibited Use of Aliases*

Respondent may not use aliases and shall be prohibited from using any name which is not his/her legally-recognized name or based upon a legal change of name.

21. *Work of Less Than 20 Hours Per Week*

If the respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. The respondent shall notify the Board if he works less than 192 hours in a three month period.

22. *Tolling of Probation*

The period of probation shall run only during the time respondent is practicing within the jurisdiction of California. If, during probation, respondent does not practice within the jurisdiction of California, respondent is required to immediately notify the probation monitor in writing of the date that respondent's practice is out of state, and the date of return, if any. Practice by the respondent in California prior to notification to the Board of the respondents return will not be credited toward completion of probation. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

23. *Violation of Probation*

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

24. *Cease of Practice Due To Retirement, Health or Other Reasons*

Following the effective date of this probation, if respondent ceases practicing as a physical therapist assistant due to retirement, health or other reasons respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, the respondent makes application for the renewal of the tendered license or makes application for a new license.

25. *Completion of Probation*

Upon successful completion of probation, respondent's license or approval shall be fully restored.

IT IS SO ORDERED. This Decision shall be effective August 4, 2003.

Dated: July 3, 2003

Original signed by Ellen Wilson
ELLEN WILSON, P.T., President,
Physical Therapy Board of California